

26- Economic Impact Assessment

DEPARTMENT OF FOOD AND AGRICULTURE Meat, Poultry and Egg Safety Branch ECONOMIC IMPACT ASSESSMENT

SUBJECT MATTER OF PROPOSED REGULATIONS

Shell Egg Food Safety

SECTIONS AFFECTED

Adopt Section 1350. Shell Egg Food Safety
Amend Section 1354. Marking Requirements

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL

The Department of Food and Agriculture (Department) proposes to adopt section 1350, and amend section 1354 of Subchapter 3, Chapter 1, Division 3, of Title 3 of the California Code of Regulations. The purpose of this proposal is to ensure that eggs are produced in a uniform manner to ensure the quality and safety of shell eggs sold for human consumption by reducing the occurrence of *Salmonella enterica* serotype Enteritidis (SE) contamination of shell eggs during egg production.

This proposal would require any person registered with the Department to engage in business in California as an egg producer or egg handler, and any out-of-state egg handler or egg producer selling eggs in California to (1) implement SE reduction measures consistent with state and federal requirements; (2) comply, within a commercially reasonable time frame, with a minimum numeric enclosure requirement for egg-laying hens if the eggs produced from those hens are sold in California; and (3) comply with specified egg container label requirements to include an affirmative label statement on every package of shell eggs that are for sale in California, certifying that those eggs were sold in compliance with these standards.

Existing law, section 27521 of the Food and Agricultural Code, authorizes the Department to assure that healthful and wholesome eggs of known quality are sold in this state; to facilitate the orderly marketing of shell eggs in a uniform manner; and to prevent the marketing of deceptive or mislabeled containers of eggs.

Existing law, section 27531 of the Food and Agricultural Code, authorizes the Department to adopt regulations relating to the preparation for market and marketing of shell eggs as determined to be reasonably necessary to carry out the purposes of Chapter 1, Part 4, Division 12 of the Food and Agricultural Code.

Existing law, section 27533 of the Food and Agricultural Code specifies that regulations adopted pursuant to Chapter 1, Part 4, Division 12 relating to egg shell surveillance inspection shall be consistent with any federal standards or procedures promulgated by the United States Department of Agriculture on that subject.

Existing law, section 27573 of the Food and Agricultural Code established an advisory committee to the Secretary of the Department on all matters pertaining to standards for shell eggs, the quality of shell eggs; recommendations concerning sampling; uniformity of inspection; adjustment of fees for proper administration and enforcement; annual budget for the administration and enforcement of the chapter and all matters pertaining to this chapter or regulations adopted pursuant thereto; and,

components of the Egg Quality Assurance Plan, a voluntary food safety program, that are consistent with and promote the purposes of the chapter.

Existing law, section 27637 of the Food and Agricultural Code specifies that it is unlawful for a person to make any false, deceptive, or misleading statements concerning the quality, size, weight, condition, source, origin, or any other matter relating to eggs.

Existing law, section 27541 of the Food and Agricultural Code specifies that any person engaged in business in California as an egg producer or egg handler, or any out-of-state egg handler or egg producer selling eggs into California, shall register with the Department. A producer is defined in section 27510.1 of the Food and Agricultural Code to mean a person engaged in the business of producing eggs from domesticated fowl for human consumption.

In accordance with the above-noted sections of law, the Department has in place existing regulations specifying the requirements for persons marketing eggs in California under Subchapter 3, Chapter 1, Division 3, of Title 3 of the California Code of Regulations.

The Department is proposing amendments to the requirements for the marketing of eggs in California by adopting section 1350 (shell egg food safety) and amending section 1354 (marking requirements) of Subchapter 3, Chapter 1, Division 3 of Title 3 of the California Code of Regulations. The intent of this proposal is to ensure that eggs are produced in a uniform manner to ensure the quality and safety of shell eggs sold for human consumption.

Based on an initial evaluation, the Department does not believe the proposed regulations are inconsistent or incompatible with existing state or federal regulations.

BUSINESS IMPACT:

The Department has determined that this regulatory proposal will impact the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

The Department has made an initial determination that the proposed regulatory action will have significant statewide adverse economic impact directly affecting California businesses including the ability of California businesses to compete with businesses in other states.

The Department has made an initial determination that this regulatory proposal will impact shell egg producers, handlers, processing plants, producers, and wholesalers should they choose to engage in the practice of marketing eggs in California.

The Department's proposal affects small businesses.

The Department is making these determinations because due to the cost impacts of this proposal, producer may choose to not market their eggs in California.

- ***Businesses Impacted:*** Approximately 1,151 registered egg handlers consisting of 10 processing plants, 608 which are both processing plants and producers, 202 wholesalers, and 331 producers.

This proposal requires two additional environmental tests and a SE vaccination program than what is currently required by the federal Egg Safety Rule [21 CFR Part 118]. The Department is calculating the cost of the provisions of this proposal, not the current cost for businesses to comply with existing state or federal regulations, or the cost to existing businesses that participate in the

voluntary California Egg Quality Assurance Program for SE control, or the cost of the space requirements specified in Health and Safety Code sections 25990 and 25991 for egg-laying hens.

Estimated costs to businesses to comply with the SE prevention measures by January 1, 2013:

There are approximately 1,279 farms in California that produce eggs, of that total, the majority of the eggs are produced from 150 farms represented by 28 companies. Nationally, there are approximately 5,098 farms and a majority of those eggs produced are from 69 farms. There are approximately 20 million hens in California and 14 million out-of-state producing eggs sold in California. Out-of-state facilities contribute about 40% of all eggs sold in California.

- Testing of chick papers at delivery for about 8,000-30,000 chicks total about \$35 per truck (a farm can receive about 100,000 chicks per delivery)
- The cost for SE control and surveillance is about \$0.12 cents per hen (11 cents for vaccination and one cent for environmental testing)
- Annual costs of SE environmental testing and vaccination are approximately \$1,413, 320 for producers

Costs to businesses to implement the minimum enclosure size requirements for egg-laying hens by January 1, 2015:

The implementation date of January 1, 2015 was set to avoid conflict with Health and Safety Code section 25996. The space requirements specified in this proposal were set to be consistent with the EU standard, but do not conflict with Health and Safety Code sections 25990 and 25991. The enclosure requirements of this proposal impose minimal to non-existent costs to businesses and are not included in the cost impacts to businesses. It is not the intent of the Department to capture costs already imposed by other state or federal laws or regulations. The businesses impacted by the enclosure requirements are: Approximately 1,279 farms in California produce eggs, of that total, the majority of the eggs are produced from 150 farms represented by 28 companies. Nationally, there are approximately 5,098 farms and a majority of those eggs produced are from 69 farms. There are approximately 20 million hens in California and 14 million out-of-state producing eggs sold in California. Out-of-state facilities contribute about 40% of all eggs sold in California.

- The Department has made an initial determination that there are no adverse economic impacts to businesses to comply with the labeling requirements under section 1354 as amended by this proposal, in regards to adding specified wording or statements to existing labels on all containers of eggs sold in California.
- *Registration costs:* There are existing application and registration fees in statutes or regulations; however, no new registration fees are imposed by this proposal.
- *Paperwork/Reporting:* There are no new reporting requirements under this proposal. The Department is proposing an expanded labeling statement on containers of all eggs sold in California. It is anticipated any costs associated with the labeling requirements would be negligible, as producers are already complying with specified labeling requirements pursuant to existing regulation section 1354, and the implementation date of January 1, 2015 allows for the depletion of current packaging inventories.
- *Record-keeping:* This proposal may incur additional record-keeping requirements due to the expanded labeling requirement on all containers of eggs to ensure compliance with this proposal, as well as records of environmental testing and vaccinations. However, the records are not required to be sent to the Department. The Department would conduct audits and inspections of

facilities to ensure compliance with the requirements as specified in this proposal. Any additional record-keeping costs are anticipated to be negligible since record-keeping is a standard business practice for persons marketing eggs in California.

BENEFIT OF PROPOSED REGULATIONS:

This proposal benefits the health and welfare of the citizens of California by serving to ensure only healthful and wholesome eggs are marketed to consumers in accordance with Food and Agricultural Code section 27521. The benefits mitigate any potential adverse economic impacts identified in this proposal. SE is among the leading bacterial causes of food borne illness in the United States, and shell eggs are a primary source of human SE infections. California consumers and the egg industry would benefit from this proposal because the Department is charged with the mission of assuring that healthful and wholesome eggs of known quality are sold in this state and to facilitate the orderly marketing of shell eggs in a uniform manner in accordance with Food and Agricultural Code section 27521. Monetary benefits would be the potential reduction of the occurrence of SE in shell eggs which could cost the industry millions in recalling contaminated eggs from the marketplace and could lead to illnesses to the public. Nonmonetary benefits would be consumer confidence that comes from knowing that eggs sold in California meet the nation's highest food safety standards and market stability derived from strong food borne illness prevention measures applied equally to all suppliers into California markets and clear labeling of such products.

ECONOMIC IMPACT ASSESSMENT CONCLUSION:

The Department of Food and Agriculture (Department) has made an initial determination that the proposed regulatory action would have significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation imposes mandatory requirements on shell egg processing producers, handlers and wholesalers who engage in the business of marketing eggs in California. The total estimated dollar cost of all provisions of this proposal is \$1,413,320 annually.

As part of its Economic Impact Assessment, the Department has determined that its proposal will affect the ability of California businesses to compete with other states by making it more costly to produce goods or services and that it will create or eliminate jobs or occupations. The Department's proposal does not impact multiple industries. The Department is making these determinations because due to cost impacts, producers may choose to not market their eggs in California.

The following tables and information were relied upon in formulating the economic impact assessments:

Table 1-Environmental Testing and Vaccination Costs

Table 2-Farm Numbers by Characteristics

Table 3-Costs: Vaccination and Testing (Detail)

Table 4 (Cont)-Costs: Vaccination and Testing

Table 5-Costs of SE illnesses

Table 1-Environmental Testing and Vaccination Costs

	Cost per Hen					Population Size		Annual Cost of Programs				
	Total ^{4/}	Size Exempt.	FDA Req.	CEQAP Req.	CDFA Proposal	Hens ^{5/}	52/70 wk adjust.	Total	Size Exempt.	FDA Req.	CEQAP Req.	CDFA Proposal
CA facilities												
Somewhat small ^{1/}	\$0.12296	\$0.12296			\$0	129,118	95,916	\$11,794	\$11,794	\$0	\$0	\$0
Large ^{2/}												
w/CEQAP	\$0.12296		\$0.02439	\$0.09857	\$0	15,721,883	11,679,113	\$1,436,080	\$0	\$284,884	\$1,151,196	\$0
w/o CEQAP	\$0.12296		\$0.02439		\$0.09857	5,240,628	3,893,038	\$478,693	\$0	\$94,961	\$0	\$383,732
OOS												
Facilities ^{3/}	\$0.12296		\$0.02439		\$0.09857	14,061,086	10,445,378	\$1,284,378	\$0	\$254,790	\$0	\$1,029,588
					TOTALS	35,152,715	26,113,445	\$3,210,945	\$11,794	\$634,635	\$1,151,196	\$1,413,320

^{1/} 1 to 2999 birds

^{2/} 3000+ birds

^{3/} Assumes OOS (Out-of-State) facilities shipping into California are all 3000+ birds

^{4/} The total cost of \$0.12296 for SE control = \$0.11373 for vaccination and \$0.009233 for testing.

It is at the high end of the cost range as it is based on a 10,000 hen facility and Southern California wage rates.

^{5/} California numbers are from the US census of agriculture, Assumptions:

(A) CEQAP covers 75% of all large farms

(B) OOS egg imports are 40% of all eggs sold in California, therefore OOS hen numbers are two-thirds of California's total population.

Table 2- Farm Numbers by Characteristics

Number of Hens	Number of Farms
1 to 99	889
100+	390
Total	1,279
150 Farms (28 companies) are/were CEQAP members	

Farm Size	2007 Census of Ag		2002 Census of Ag	
	Farms	Hens	Farms	Hens
1 to 49	4,553	61,148	2,856	40,527
50 to 99	265	16,183	176	11,060
100 to 399	159	27,267	105	16,065
400 to 3,199	48	49,040	30	40,932
3,200 to 9,999	4	18,428	3	17,811
10,000 to 19,999	9	130,932	8	96,931
20,000 to 19,999	15	520,200	9	346,050
20,000 to 99,999	8	566,000	13	962,675
100,000 plus	37	19,702,431	44	21,236,253
TOTAL	5,098	21,091,629	3,244	22,768,304
1 to 2,999	5,001	129,118		
3,000 plus	97	20,962,511		
TOTAL	5,098	21,091,629		

Table 3-Costs: Vaccination and Testing (Detail)

SE Vaccines	\$0.01764 per bird		\$14.66 NORTH	\$16.01 SOUTH	
Age of chicks/pullets	Method of vaccine delivery	Estimated labor time hrs per 1,000 birds	Estimated labor costs per bird		
Day 1	Spray	1	\$0.01468	\$0.01601	
5 weeks	Spray	0.6	\$0.00881	\$0.00961	
9 weeks	Spray	0.6	\$0.00881	\$0.00961	
14 weeks	Injection	3.8	\$0.05579	\$0.06086	
SE Testing			birds per truck		
Chick papers	\$35 per truck		8,000	15,000	30,000
	(8,000 to 30,000 chicks)		\$0.00438	\$0.00233	\$0.00117
Push-out sample			birds per house		
Cage-free system	\$51.75 per house		10,000	100,000	200,000
Caged system	\$69.00 per house		\$0.00518	\$0.00052	\$0.00026
			\$0.00690	\$0.00069	\$0.00035

NORTHERN CALIFORNIA (\$14.68/hr)				SOUTHERN CALIFORNIA (\$16.01/hr)			
	birds per house				birds per house		
	10,000	100,000	200,000		10,000	100,000	200,000
SE vaccines (4)	\$0.01764	\$0.01764	\$0.01764		\$0.01764	\$0.01764	\$0.01764
Day 1	\$0.01468	\$0.01468	\$0.01468		\$0.01601	\$0.01601	\$0.01601
5 weeks	\$0.00881	\$0.00881	\$0.00881		\$0.00961	\$0.00961	\$0.00961
9 weeks	\$0.00881	\$0.00881	\$0.00881		\$0.00961	\$0.00961	\$0.00961
14 weeks	\$0.05579	\$0.05579	\$0.05579		\$0.06086	\$0.06086	\$0.06086
birds per truck							
15,000							
chick papers	\$0.00233	\$0.00233	\$0.00233		\$0.00233	\$0.00233	\$0.00233
Push-out sample							
Caged system	\$0.00690	\$0.00069	\$0.00035		\$0.00690	\$0.00069	\$0.00035
Total SE Cost	\$0.11497	\$0.10876	\$0.10841		\$0.12296	\$0.11675	\$0.11641

Table 4 (Cont.)-Costs: Vaccination and Testing (Detail)

2009	No. Coast	No. Valley	So. Valley	So. California	2010
\$12.01	\$10.26	\$12.25	\$12.21	\$13.35	\$12.23
\$3.55	\$3.16	\$3.82	\$3.24	\$3.69	\$3.51
\$15.56	\$13.42	\$16.07	\$15.45	\$17.03	\$15.74
	31%	31%	27%	28%	29%
	7.65%	4.90%	7.50%	20.05%	
	\$10.26	\$12.25	\$12.21	\$13.34	
	\$2.06	\$2.46	\$2.45	\$2.67	
	\$12.32	\$14.71	\$14.66	\$16.01	
	North		South		
Wages	\$14.68		\$16.01		

Table 5-Costs of SE illnesses

	All		Eggs		Eggs California	
Cases	1,400,000	47%	661,633	100%	12%	79,396
Home Recover			624,912	94%	12%	74,989
MD Visit			33,082	5%	12%	3,970
Hospital			3,308	0.5%	12%	397
Death	415	80%	331	0.05%	12%	40
Cost	\$310,000,000		\$146,504,450		12%	\$17,580,534